
By: **Delegates Goldwater, Benson, V. Clagett, Costa, Montgomery, Nathan-Pulliam, and Smigiel Smigiel, Hurson, Hammen, Boteler, Boutin, Bromwell, Donoghue, Elliott, Hubbard, Mandel, McDonough, Morhaim, Murray, Oaks, Pendergrass, Rosenberg, Rudolph, V. Turner, and Weldon**

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Assigned to: Health and Government Operations

Committee Report: Favorable with amendments
House action: Adopted
Read second time: March 24, 2004

CHAPTER _____

1 AN ACT concerning

2 **Continuing Care Facilities - Internal Grievance Procedure**

3 FOR the purpose of requiring a provider of continuing care to include in a certain
4 disclosure statement a description of the facility's internal grievance procedure;
5 requiring a provider of continuing care to establish a certain internal grievance
6 procedure; providing for the components of the internal grievance procedure;
7 requiring certain continuing care agreements to state that there is an internal
8 grievance procedure to investigate subscriber grievances; and generally relating
9 to an internal grievance procedure for continuing care facilities.

10 BY repealing and reenacting, with amendments,
11 Article 70B - Department of Aging
12 Section 11C and 13
13 Annotated Code of Maryland
14 (2003 Replacement Volume)

15 BY adding to
16 Article 70B - Department of Aging
17 Section 11G
18 Annotated Code of Maryland
19 (2003 Replacement Volume)

1 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
2 MARYLAND, That the Laws of Maryland read as follows:

3 **Article 70B - Department of Aging**

4 11C.

5 (a) (1) The provider shall furnish without cost to all prospective subscribers,
6 before payment of any part of the entrance fee or, if earlier, the execution of a
7 continuing care agreement, and annually to all subscribers on request, a disclosure
8 statement for each facility of the provider holding a preliminary certificate of
9 registration or a certificate of registration.

10 (2) The provider shall submit its initial disclosure statement to the
11 Department for review at least 45 days before distributing the statement to any
12 prospective subscribers.

13 (b) (1) The provider shall revise the disclosure statement annually and file
14 the disclosure statement with the Department within 120 days after the end of the
15 provider's fiscal year.

16 (2) The Department shall review the disclosure statement solely to
17 ensure compliance with this section.

18 (c) The disclosure statement shall include:

19 (1) The name, address, and description of the facility and the name and
20 address of any parent or subsidiary person;

21 (2) The organizational structure and management of the provider,
22 including:

23 (i) If the provider is a corporation or limited liability company, the
24 name of the corporation or limited liability company, the state in which the
25 corporation is incorporated or the limited liability company is formed, and the name
26 of the chief executive officer;

27 (ii) If the provider is a partnership, the names of the general
28 partners, the state governing the formation of the partnership, and the name of the
29 primary individual responsible for managing the partnership;

30 (iii) If the provider is an unincorporated association, the names of
31 the members, the state governing the association's activities, and the name of the
32 primary individual responsible for managing the association;

33 (iv) If the provider is a partnership having a corporation or limited
34 liability company as one or more of its general partners, the name of the corporation
35 or limited liability company, the state in which the corporation is incorporated or the
36 limited liability company is formed, and the name of the chief executive officer;

1 (v) If the provider is a trust, the name of the trustee, the names of
2 the owners of the beneficial interests in the trust, the state governing the trust, and
3 the name of the primary individual responsible for overseeing the trust's activities;
4 and

5 (vi) A statement regarding whether the provider is qualified, or
6 intends to qualify, as a tax-exempt organization under the Internal Revenue Code;

7 (3) A statement regarding any affiliation of the provider with a religious,
8 charitable, or other nonprofit organization, and the extent to which the organization
9 is responsible for the financial and contractual obligations of the provider;

10 (4) A description of all basic fees, including entrance fees, fees for health
11 related services, and periodic fees, collected by the provider from subscribers, setting
12 forth the amount and frequency of the fee changes during each of the previous 5
13 years. If the facility has been in operation less than 5 years, then the description shall
14 be for each year that it has been in operation;

15 (5) A statement describing provisions that have been or will be made to
16 comply with the operating reserve requirements as described in § 11B of this subtitle,
17 and a general statement regarding the provider's investment policy related to the
18 required reserves, including how often the reserve fund investment is reviewed and
19 by whom;

20 (6) A copy of the most recent certified financial statement obtainable
21 under generally accepted accounting principles;

22 (7) A description of the long-term financing for the facility;

23 (8) If the facility has not reached 85% occupancy of independent living
24 units, a summary of the feasibility study;

25 (9) A cash flow forecast statement for the current and the next 2 fiscal
26 years;

27 (10) The names and occupations of the officers, directors, trustees,
28 managing or general partners, and any other persons with a 10% or greater equity or
29 beneficial interest in the provider, and a description of the financial interest in or
30 occupation with the provider;

31 (11) The name and address of any professional service firm, association,
32 trust, partnership, company, or corporation in which a person identified in item (10)
33 of this subsection has a 10% or greater financial interest and which is anticipated to
34 provide goods, premises, or services to the facility or provider of a value of \$10,000 or
35 more within any fiscal year, including a description of the goods, premises, or services
36 and their anticipated cost to the facility or provider. However, the disclosure of salary,
37 wage, or benefit information of employees of the provider is not required;

38 (12) The name of the proposed manager or management company if the
39 facility is or will be managed on a day-to-day basis by a person other than an

1 individual directly employed by the provider, and a description of the business
2 experience, if any, of the manager or company in the operation or management of
3 similar facilities;

4 (13) A description of any matter in which an individual identified in item
5 (10) of this subsection:

6 (i) Has been convicted of a felony or pleaded nolo contendere to a
7 felony charge, if the felony involved fraud, embezzlement, fraudulent conversion, or
8 misappropriation of property;

9 (ii) Has been held liable or enjoined in a civil action by final
10 judgment if the civil action involved fraud, embezzlement, fraudulent conversion, or
11 misappropriation as a fiduciary; or

12 (iii) Has been subject to an effective injunctive or restrictive order of
13 a court of record or, within the past 10 years, had any State or federal license or
14 permit suspended or revoked as a result of an action brought by a governmental
15 agency, arising out of or relating to business activity or health care, including actions
16 affecting a license to operate any facility or service for aging, impaired, or dependent
17 persons;

18 (14) A description of the form of governance of the provider, including the
19 composition of the governing body, and a statement that the provider shall satisfy the
20 requirements of § 11A of this subtitle;

21 (15) If applicable, a description of the conditions under which the provider
22 may be issued a certificate of registration and may use escrowed deposits, and a
23 statement of the amount of the subscriber's deposit that may be used;

24 (16) A summary of the basic services provided or proposed to be provided
25 at the facility under the continuing care agreement, including the extent to which
26 health related services are furnished, that clearly states which services are indicated
27 in the agreement as included in the basic fee or fees and which services are or will be
28 made available at or by the facility at an extra charge;

29 (17) A statement that the provider shall amend its disclosure statement if,
30 at any time, in the opinion of the provider or the Department, an amendment is
31 necessary to prevent the disclosure statement from containing any material
32 misstatement of fact required by this section to be stated in the disclosure statement
33 or omission of a material fact required by this section to be stated in the disclosure
34 statement;

35 (18) A description of any activity involving a renovation or an expansion,
36 whether or not subject to Department review, during the preceding fiscal year or
37 proposed for the current fiscal year;

38 (19) A statement if it is the provider's policy to impose a surcharge on
39 some, but not all, subscribers because of some condition or circumstance and that the

1 surcharge will not be considered part of the entrance fee in the statutory refund
2 under § 15 of this subtitle;

3 (20) A description of the existence and role of the resident association;
4 [and]

5 (21) A DESCRIPTION OF THE INTERNAL GRIEVANCE PROCEDURE; AND
6 ~~INCLUDING:~~

7 ~~(I) THE OPPORTUNITY FOR A SUBSCRIBER TO SUBMIT A WRITTEN~~
8 ~~GRIEVANCE IN ANY FORM TO THE PROVIDER;~~

9 ~~(II) PROMPT INVESTIGATION OF A SUBSCRIBER'S GRIEVANCE AND~~
10 ~~A HEARING IN NECESSARY SITUATIONS;~~

11 ~~(III) THE MANNER IN WHICH THE CAUSE OF A GRIEVANCE WILL BE~~
12 ~~OR ATTEMPT TO BE ALLEVIATED OR REMEDIED DURING AN INVESTIGATION OF A~~
13 ~~GRIEVANCE;~~

14 ~~(IV) THE REQUIRED PARTICIPATION OF ONE OR MORE INDIVIDUALS~~
15 ~~AUTHORIZED BY THE PROVIDER TO TAKE CORRECTIVE ACTION TO REMEDY THE~~
16 ~~CAUSE OF A GRIEVANCE;~~

17 ~~(V) THE RIGHT OF THE SUBSCRIBER WHO SUBMITTED THE~~
18 ~~GRIEVANCE AND OF OTHER SUBSCRIBERS ON BEHALF OF THE AGGRIEVED~~
19 ~~SUBSCRIBER TO PARTICIPATE IN THE GRIEVANCE PROCEDURE;~~

20 ~~(VI) THE RIGHT OF A SUBSCRIBER WHO SUBMITTED A GRIEVANCE~~
21 ~~TO BE NOTIFIED OF THE DISPOSITION OF THE SUBSCRIBER'S GRIEVANCE AND ANY~~
22 ~~CORRECTIVE ACTION TAKEN; AND~~

23 ~~(VII) THE RIGHT OF SUBSCRIBERS TO ESTABLISH AND PARTICIPATE~~
24 ~~ON A SUBSCRIBER GRIEVANCE PANEL THAT:~~

25 ~~1. IS COMPOSED OF SUBSCRIBERS ONLY;~~

26 ~~2. PRESENTS GRIEVANCES TO THE PROVIDER, FACILITY~~
27 ~~MANAGERS, ADMINISTRATORS, OR STAFF, PUBLIC OFFICIALS, AND ANY OTHER~~
28 ~~INDIVIDUALS ON BEHALF OF A SUBSCRIBER; AND~~

29 ~~3. WORKS WITH THE PROVIDER, FACILITY MANAGERS,~~
30 ~~ADMINISTRATORS, AND STAFF OR ANY OTHER INDIVIDUALS WITHIN OR OUTSIDE~~
31 ~~THE FACILITY TO IMPROVE THE QUALITY OF CARE FOR SUBSCRIBERS; AND~~

32 [(21)] (22) Such other material information concerning the facility or the
33 provider as the Department requires or that the provider wishes to include.

34 (d) The disclosure statement shall contain a cover page that states, in a
35 prominent location and type face, the date of the disclosure statement and that the
36 issuance of a certificate of registration does not constitute approval, recommendation,

1 or endorsement of the facility by the Department, nor is it evidence of, or does it attest
2 to, the accuracy or completeness of the information set out in the disclosure
3 statement.

4 (e) Any amended disclosure statement:

5 (1) Shall be filed with the Department at the same time that it is
6 delivered to any subscriber or prospective subscriber; and

7 (2) Is subject to all the requirements of this subtitle.

8 (f) (1) In addition to any other requirements of this section, if a provider's
9 continuing care agreement includes a provision to provide assisted living program
10 services and the provider does not execute a separate assisted living agreement, the
11 disclosure statement shall contain with regard to the assisted living program:

12 (i) The name and address and a description of each facility that the
13 provider operates;

14 (ii) A statement regarding the relationship of the provider to other
15 providers or services if the relationship affects the care of the resident;

16 (iii) A description of any special programming, staffing, and training
17 provided by the program for individuals with particular needs or conditions such as
18 cognitive impairment;

19 (iv) Notice of:

20 1. The availability of locks for storage;

21 2. The availability of locks, if any, for the subscriber's room;

22 3. The security procedures which the provider shall
23 implement to protect the subscriber and the subscriber's property; and

24 4. The provider's right, if any, to enter a subscriber's room;

25 (v) A statement of the obligations of the provider, the subscriber, or
26 the subscriber's agent as to:

27 1. Arranging for or overseeing medical care;

28 2. Monitoring the health status of the subscriber;

29 3. Purchasing or renting essential or desired equipment and
30 supplies; and

31 4. Ascertaining the cost of and purchasing durable medical
32 equipment;

1 (vi) An explanation of the assisted living program's complaint or
2 grievance procedure; and

3 (vii) Notice of any material changes in the assisted living program.

4 (2) The provider shall:

5 (i) Furnish annually without cost to each subscriber revisions to
6 the disclosure statement provisions under paragraph (1) of this subsection;

7 (ii) Ensure that each subscriber, or the subscriber's agent, initials
8 the revised disclosure statement to indicate acknowledgment of the revisions; and

9 (iii) Make available a copy of each initialed disclosure statement for
10 inspection by the Department of Health and Mental Hygiene under Title 19, Subtitle
11 18, of the Health - General Article.

12 11G.

13 (A) A PROVIDER SHALL ESTABLISH AN INTERNAL GRIEVANCE PROCEDURE TO
14 ADDRESS A SUBSCRIBER'S GRIEVANCE.

15 (B) AN INTERNAL GRIEVANCE PROCEDURE SHALL PROVIDE FOR:

16 (1) THE OPPORTUNITY FOR A SUBSCRIBER TO SUBMIT A WRITTEN
17 GRIEVANCE TO THE PROVIDER; AND

18 (2) A TIMELY RESPONSE FROM THE PROVIDER AS TO THE
19 INVESTIGATION AND RESOLUTION OF THE SUBSCRIBER'S GRIEVANCE.

20 13.

21 (a) In addition to such other provisions as may be considered proper to
22 effectuate the purpose of any continuing care agreement, each agreement executed
23 between a subscriber and a provider shall, in a form acceptable to the Department:

24 (1) Show the total consideration paid by the subscriber for continuing
25 care including the value of all property transferred, donations, entrance fees,
26 subscriptions, monthly fees, and any other fees paid or payable by or on behalf of a
27 subscriber;

28 (2) Specify all services such as food, shelter, medical care, nursing care,
29 or other health related services, which are to be provided by the provider to each
30 subscriber, including in detail all items which each subscriber will receive, whether
31 the items will be provided for a designated time period or for life;

32 (3) Designate the classes of subscribers according to types of payment
33 plans;

34 (4) Describe the procedures to be followed by the provider when the
35 provider temporarily or permanently changes the subscriber's accommodation within

1 the facility or transfers the subscriber to another health facility, but a subscriber's
2 accommodations shall be changed only for the protection of the health or safety of the
3 subscriber or the general and economic welfare of the residents;

4 (5) Describe the policies that will be implemented in the event the
5 subscriber becomes unable to meet the monthly fees;

6 (6) State the policy of the provider with regard to changes in
7 accommodations and the procedure to be followed to implement that policy in the
8 event of an increase or decrease in the number of persons occupying an individual
9 unit;

10 (7) Provide in clear and understandable language, boldface type, and in
11 the largest type used in the body of the agreement, the terms governing the refund of
12 any portion of the entrance fee in the event of discharge by the provider or
13 cancellation by the subscriber;

14 (8) State the terms under which an agreement is canceled by the death
15 of the subscriber;

16 (9) Provide in clear and understandable language, boldface type, and in
17 the largest type used in the agreement, whether or not monthly fees, if charged, will
18 be subject to periodic increases;

19 (10) Provide that charges for care paid in advance in 1 lump sum only
20 shall not be increased or changed during the duration of the agreed upon care;

21 (11) State which funeral and burial services, if any, will be provided by the
22 provider;

23 (12) Give a description of the living quarters;

24 (13) State the conditions, if any, under which a unit may be assigned to
25 the use of another by the subscriber;

26 (14) State the religious or charitable affiliations of the provider and the
27 extent, if any, to which the affiliate organization will be responsible for the financial
28 and contractual obligations of the provider;

29 (15) State the subscriber's and provider's respective rights and obligations
30 as to use of the facility and as to real and personal property of the subscriber placed
31 in the custody of the provider;

32 (16) State that the subscribers shall have the right to organize and
33 operate a subscriber association at the facility and to meet privately to conduct
34 business;

35 (17) STATE THAT THERE IS AN INTERNAL GRIEVANCE PROCEDURE TO
36 INVESTIGATE THE GRIEVANCES OF SUBSCRIBERS;

1 [(17)] (18) State what, if any, fee adjustments will be made in the event
2 the subscriber is voluntarily absent from the facility for an extended period of time;

3 [(18)] (19) Specify the circumstances, if any, under which the subscriber
4 will be required to apply for Medicaid, Medicare, public assistance, or any public
5 benefit program and whether or not the facility is a participant in Medicare or
6 medical assistance;

7 [(19)] (20) State that the subscriber has received and reviewed the latest
8 certified financial statement and that a copy of the certified financial statement was
9 received at least 2 weeks before signing the agreement;

10 [(20)] (21) Provide that the facility will make available to the subscriber,
11 upon request, any certified financial statement transmitted to the Department;

12 [(21)] (22) Where applicable, describe the conditions under which the
13 provider may be issued a certificate of registration, describe the conditions under
14 which the provider may use escrowed deposits, and state the amount of the
15 subscriber's deposit that may be used upon issuance of a certificate of registration;

16 [(22)] (23) State that fees collected by a provider under the terms of a
17 continuing care agreement may not be used for purposes other than those set forth in
18 the agreement;

19 [(23)] (24) Allow a subscriber to designate a beneficiary for receipt of
20 any refundable portion of the entrance fee, if:

21 (i) The designation is in writing;

22 (ii) The designation is witnessed by two or more competent
23 witnesses;

24 (iii) The designation is noncontingent; and

25 (iv) The designation is specified in percentages and accounts for 100
26 percent of the refund due; and

27 [(24)] (25) Contain the following statement in boldface type, and in the
28 largest type used in the agreement: "A preliminary certificate of registration or
29 certificate of registration is not an endorsement or guarantee of this facility by the
30 State of Maryland. The Maryland Department of Aging urges you to consult with an
31 attorney and a suitable financial advisor before signing any documents."

32 (b) Except as provided in subsection [(a)(23)] (A)(24) of this section, a
33 requirement of this section shall not apply to any continuing care agreements entered
34 into before the effective date of the requirement.

35 (c) The provider shall maintain the continuing care agreement on site and
36 make it available for inspection by the Department of Health and Mental Hygiene
37 under Title 19, Subtitle 18, of the Health - General Article.

1 (d) In addition to any other requirements of this section, if a provider's
2 continuing care agreement includes a provision to provide assisted living program
3 services and the provider does not execute a separate assisted living agreement, each
4 continuing care agreement executed between a subscriber and a provider shall
5 include with regard to the assisted living program:

6 (1) A statement of the level of care for which the assisted living program
7 is licensed;

8 (2) As part of the procedures to be followed under subsection (a)(4) of this
9 section, if the subscriber is transferred to an assisted living program, the procedures
10 to be followed by the provider for notifying the subscriber of the level of care needed
11 by the subscriber;

12 (3) A statement indicating the options available to a subscriber if the
13 subscriber's level of care, after admission to an assisted living program, exceeds the
14 level of care for which the provider is licensed;

15 (4) Based on a sample list of assisted living program services maintained
16 by the Department of Health and Mental Hygiene, a statement of those services
17 provided by the assisted living program and those services not provided by the
18 assisted living program;

19 (5) A statement of the obligations of the provider and the subscriber or
20 the subscriber's agent as to handling the finances of the subscriber;

21 (6) A statement of the obligations of the provider and the subscriber or
22 the subscriber's agent as to disposition of the subscriber's property upon discharge or
23 death of the subscriber; and

24 (7) The applicable rate structure and payment provisions covering:

25 (i) All rates to be charged to the subscriber, including:

26 1. Service packages;

27 2. Fee-for-service rates; and

28 3. Any other nonservice-related charges;

29 (ii) Criteria to be used for imposing additional charges for the
30 provision of additional services, if the subscriber's service and care needs change;

31 (iii) Payment arrangements and fees, if known, for third-party
32 services not covered by the continuing care agreement, but arranged for by either the
33 subscriber, the subscriber's agent, or the assisted living program;

34 (iv) Identification of the persons responsible for payment of all fees
35 and charges and a clear indication of whether the person's responsibility is or is not
36 limited to the extent of the subscriber's funds;

1 (v) A provision for at least 45 days' notice of any rate increase,
2 except if necessitated by a change in the subscriber's medical condition; and

3 (vi) Fair and reasonable billing and payment policies.

4 (e) (1) If a provider's feasibility study has been approved under § 10 of this
5 subheading, the Department shall decide whether to approve a continuing care
6 agreement within 180 days of receipt of a complete agreement.

7 (2) If the Department takes no action within 180 days, the agreement is
8 deemed approved.

9 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take
10 effect October 1, 2004.